(1) Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

FRANK J. CAMOSCIO,

PETITIONER,

vs.

JUDGE ROBERT A. MULLIGAN,

AND

CLERK-MAGISTRATE DANIEL F. POKASKI,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME JUDICIAL COURT

OF THE COMMONWEALTH OF MASSACHUSETTS

PETITION FOR WRIT OF CERTIORARI

FRANK J. CAMOSCIO
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36 pp

QUESTIONS PRESENTED

A. WHETHER THE DEFENDANTS -- WHO TAMPERED WITH COURT RECORDS WITH THE IMPACT OF DAMAGING PLAINTIFF AND HIS STANDING BEFORE THE COURTS -- ARE ENTITLED TO JUDICIAL AND/OR ABSOLUTE IMMUNITY.

B. BECAUSE DEFENDANTS ACTIONS DENY PLAINTIFF EQUAL COURT ACCESS UNDER THE LAW TO DUE PROCESS, SHOULD DEFENDANTS BE AFFORDED ABSOLUTE AND/OR JUDICIAL IMMUNITY FOR SAID ACTS WHEN THAT IMMUNITY BLOCKS PLAINTIFF'S CONSTITUTIONAL RIGHTS.

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PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF THE
COMMONWEALTH OF MASSACHUSETTS

Petitioner, Frank J. Camoscio, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Massachusetts Court of Appeals entered in the above-entitled cause on February 28, 1997.

I.

OPINION BELOW

The memorandum opinion of the Court of Appeals is attached as Appendix A, although in its arrogance said court failed to explain its judgment.

II.

JURISDICTION

* * *

The opinion of the Court of Appeals of Massachusetts was entered on February 28, 1997. A timely petition for further appellate review was denied by the Supreme Court of Massachusetts on April 30, 1997.

The jurisdiction of this Court is invoked under Title 42 § 1983 of U.S.C.A. The Defendants' have intentionally conspired with others to deny the Plaintiff redress, due process and equal access to the Court under the First and Fourteenth Amendments of the United States Constitution.

III.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment of the United States Constitution provides:

Congress shall make no law

> respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. (Emphasis added to pertinent section)

The Fourteenth Amendment, Section 1 of the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Emphasis added to pertinent section)

IV.

STATEMENT OF FACTS

The Petitioner Frank J. Camoscio filed suit in Middlesex Superior Court

because the Respondents tampered with the record of his criminal conviction in Suffolk Superior Court removing 11 acted upon motions. The clerk was ordered not to accept any filings from the Petitioner after the conviction trying to correct the record. The clerk refused the Petitioner access to the Docket Sheets or the right to examine the record.

This violated the Petitioner's Constitutional Right of Equal Access to the court.

Suit was brought to restore these constitutional violations and to be compensated for these wrongful acts.

On January 5, 1995 suit was brought in Middlesex Superior Court a complaint was filed outlining these wrong-doings. Neither Respondent denied the complaint.

On March 7, 1995 the Respondents filed a Motion to Dismiss which included the Petitioner's response.

On June 27, 1995 the parties appeared before Judge Grasso to hear the motions. Judge Grasso erred in this hearing by stopping the Petitioner from presenting arguments which were contained in the motions before him.

The Petitioner filed an ex-parte motion on June 28, 1995 pointing out the Judge's error.

Judge Grasso came down with his decision on July 26, 1995.

The Petitioner filed a Motion to Correct the Judge's Error which disappeared from the official court records, however a status hearing was marked up

and heard in early December of 1995. The Respondents attorney admitted being served a copy of this motion in August of 1995. Judge Neel after receiving an ex-parte motion with copy and cover letter marked up said motion for Judge Grasso to hear.

This motion was denied on December 26, 1995.

The Petitioner filed his Notice of Appeal on January 17, 1996.

V.

REASONS FOR GRANTING THE WRIT

A. THE PETITIONER IS ENTITLED TO A JURY TRIAL TO HEAR HIS COMPLAINT SINCE THE RESPONDENTS DID TAMPER WITH THE RECORDS DESTROYING JUDICIAL AND/OR ABSOLUTE IMMUNITY.

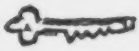
The Petitioner demonstrated in his Complaint that the Respondents did tamper with the record. The Petitioner quotes paragraph Number 5 of the complaint:

"The Defendants have no immunity for their actions since it consists of tampering with the record to remove motions filed by the Plaintiff which the Court has already acted on, motions that have been filed but the Clerk refuses to mark-up because Judge Mulligan has instructed him not to do so, and Post-Conviction Motions other judges have referred to Judge Mulligan to act on. Without these motions appearing on record the Plaintiff cannot receive proper redress".

The Respondents never denied that they tampered with the record and removed 11 motions as claimed by the Petitioner. The names of the missing motions were known to Judge Grasso even though

in his decision he tries to make the Plaintiff's Complaint devoid of factual allegations. The answer to the Judge's defect was found in the Plaintiff's Opposition to the Motion to Dismiss.

1. The first issue the Plaintiff raised was whether tampering with the record and removing motions was a Judicial function.

The Plaintiff answered the question by making the Judge aware of Judicial decisions in other Court cases. The Plaintiff cited: SLAVIN v. CURRY, 574 F. 2d 1256 (1978) "18. Civil Rights  13.8(5)

Even though state court judge was immune from action for damages for his alleged participation in alteration of transcript and cancellation of bond, judge was not immune from civil rights action for equitable or declaratory re-

'lief. 42 U.S.C.A. § 1983."

DEFINITION OF JUDICIAL IMMUNITY

"16. Judges 36

Judicial immunity extends only to those functions normally performed by a judge."

The Plaintiff not only cited from this case but gave the Judge a copy. The Plaintiff gave Judge Grasso a copy of the Docket Sheets which he obtained from the Sheriff's Department through Discovery, and through Defendant's co-counsel from the criminal case involving the Plaintiff and Dr. Paul R. Yocas. The Plaintiff also gave the Judge a copy of the February 24, 1994 transcript in which Judge Volterra Ordered the ex-parte motion before him to dismiss the case be referred to the trial judge due to prosecutorial mis-conduct. This motion never appeared on the docket sheets which was given to

Judge Grasso. Judge Mulligan was the trial Judge. A Court Order from Judge Volterra was removed. The Appeals Court is the only Court that has the right to correct a Judge's Order or remove it from the record. Judge Mulligan nor Clerk Pokaski has this Judicial Authority.

Judge Grasso stopped the Plaintiff from presenting arguments or talking about Judge Volterra to the court.

This material is found in the Defendant's opposition prior to the hearing before Judge Grasso. Proof was given to the Court that a motion was removed which had a Court Order of another Judge that had acted on this case.

The Plaintiff met the required proof that the record was tampered with by the Defendants' and the Defendants'

did not deny the record was tampered with. The Plaintiff listed 11 motions missing from the record as described in his motion entitled Ex-Parte Motion To Correct The Judges Error. The Complaint must be read as completely true and no denial by either Defendant of the Complaint. No affidavit, no sworn statement, only a generalized argument that it was their Judicial Duty. Show me the Judicial Law that gives a Judge and a Clerk-Magistrate the right to remove from the record motions already acted upon by that Judge or another Judge. No jurisdiction exists to cover such an act, therefore Judicial Immunity is destroyed.

B. THE RESPONDENTS ARE NOT ENTITLED TO ABSOLUTE AND/OR JUDICIAL IMMUNITY FOR DENYING THE PETITIONER EQUAL ACCESS AND DUE PROCESS OF LAW.

The Petitioner states that Judge Mulligan could not stop the Petitioner from filing papers in his criminal case unless he wrote a Court Order barring the Petitioner from doing so. NO COURT ORDER APPEARS ON THE DOCKET SHEETS.

The Petitioner had received a copy of the Docket Sheets from the Attorney General on March 8, 1995. The Petitioner xeroxed the docket sheets and placed them in his addendum to the Appeals Court of the Commonwealth of Massachusetts. There is no question that no Court Order has been recorded ordering the Clerk to refuse filings of Frank J. Camoscio as required by Rule 32 of the Massachusetts Rules of Criminal Procedure. No Order appears therefore Clerk-Magistrate Pokaski lacked Immunity to barr the Petitioner from filing any papers.

Judge Mulligan never recorded any Orders removing the 11 missing motions. No Judicial function was performed, no motion from the Prosecution to strike these motions were recorded. No arguments were ever allowed by the Petitioner, nor any notice was given to the Petitioner to argue against these motions from being removed.

Redress cannot occur on these motions because they do not appear on the record. Arguments against the removal of these 11 motions could not occur because the Petitioner was barred from filing any motions that addressed this illegal act by Judge Mulligan and the Clerk-Magistrate Pokaski. Once a motion is filed it cannot be removed except through the Judicial process of a hearing and a motion to strike by the opposition. <u>No motion was ever filed</u>.

Judge Mulligan and Clerk-Magistrate Pokaski lack immunity unless their acts conform to the law and they have jurisdiction. No law was cited. The Petitioner cited violation of Massachusetts Rules of Criminal Procedure.

VI.

CONCLUSION

The Petitioner has demonstrated that the Respondents acted outside the law and rules by denying him the right to file motions when no Court Order appeared and no motions were filed to strike 11 motions from the record or any Court Order appeared striking said motions. The Respondents did not argue that the Complaint was untrue. The only argument raised was that they are entitled to Judicial and Absolute Immunity because they wear robes. No one should hide behind the

way they dress. These acts are illegal and unconstitutional. These men have broken their oaths to uphold the Constitution.

If they had acted properly and recorded the Orders barring the Plaintiff from filing and recorded the Orders removing the 11 motions the Petitioner could have obtained redress and the Respondents would have acted within the law and fulfilled Rule 32 of the Massachusetts Rules of Criminal Procedure.

The Respondents failed to do this therefore Judicial and Absolute Immunity is lost.

For the foregoing reasons this Petition For Writ Of Certiori to the Supreme Judicial Court Of the Commonwealth Of Massachusetts should be granted.

Respectfully submitted,

Frank J. Camoscio

FRANK J. CAMOSCIO
252 HANOVER STREET
BOSTON, MASSACHUSETTS 02113

DATED: June 16, 1997

Richard F. LaMonica

Richard F. LaMonica
Notary Public
My Commission Expires July 17, 2003

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition For Writ of Certiorari were mailed to I. Andrew Goldberg, Assistant Attorney General, 200 Portland Street, Boston, Massachusetts 02114, Attorney for Respondents Judge Robert A. Mulligan, and Clerk-Magistrate Daniel F. Pokaski, on this 16th day of June 1997.

I hereby certify that all the statements contained in my Certificate of Service are true and are made under the pains and penalties of perjury.

Frank J. Camoscio

Frank J. Camoscio

Pro Se

Richard F. LaMonica
Notary Public
My Commission Expires July 17, 2003

APPENDIX

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX
THE SUPERIOR COURT

DOCKET# MICV95-00048D

RE: Camoscio v Mulligan et al

TO: Frank J. Camoscio
33 Plainfield Street
Waban MA 02168

NOTICE OF DOCKET ENTRY

You are hereby notified that on 05/06/97 the following entry was made on the above referenced docket:

JUDGMENT AFTER RESCRIPT - It is ORDERED and ADJUDGED: That the complaint be and hereby is Ordered dismissed. (Botsford, J.) copies sent

Dated: 6th day of May, 1997

Edward J Sullivan
Clerk of the Courts

BY: Leona Kusmirek, Asst Clerk
Telephone: 617-494-4251

APPENDIX "A"

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. Superior Court

MICV

22 95-48

Frank J. Camoscio

VS. JUDGMENT AFTER RESCRIPT

Robert A. Mulligan et al.

This action came for entry of judgment upon receipt of the rescript from the Appeals Court from the Commonwealth of Massachusetts (Rules of Appellate Procedure, Rule 28) and thereupon, upon consideration thereof, it is Ordered and Adjudged:

That the complaint be and hereby is Ordered dismissed.

Dated at Cambridge, Massachusetts this 6th day of May 1997.

(Botsford, J)

Assistant Clerk

Signed by:

James J. Lynch III
Assistant Clerk
Middlesex Superior Court

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

ROOM 1412 COURTHOUSE

BOSTON, MASSACHUSETTS 02108

(617) 557-1020

STATE
SEAL

SUSAN MELLEN
ASSISTANT CLERK

L. HOLLEY WHITE
ASSISTANT CLERK PRO TEM

JEAN M. KENNETT
CLERK

April 30, 1997

MR. Frank J. Camoscio
33 Plainfield Street
Waban, Massachusetts 02168

Re Camoscio v. Mulligan & another
Appeals Court 96-P-364

Dear Mr. Camoscio:

The Court has denied permission to file an application for further appellate review in the above matter. Justice Abrams did not participate in this decision.

Very truly yours,

Clerk

Signed by:
Jean M. Kennett
Clerk
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

THE SUPERIOR COURT

DOCKET# MICV95-00048D

RE: Camoscio v Mulligan et al

TO: Frank J Camoscio
33 Plainfield Street
Waban MA 02168

NOTICE OF DOCKET ENTRY

You are hereby notified that on 03/31/97 the following entry was made on the above referenced docket:

Rescript from the Appeals court for the Commonwealth; judgment: Judgment Affirmed. (copies sent 4/3/97)

Dated: 3rd day of April, 1997

APPENDIX "C"

C1

Edward J Sullivan
Clerk of the Courts

BY:
Leona Kusmirek, Asst Clerk
Telephone: 617-494-4251

COMMONWEALTH of MASSACHUSETTS

Appeals Court for the Commonwealth

At Boston,

In the case no. 96-P-364

FRANK J. CAMOSCIO

vs.

ROBERT A. MULLIGAN & another.

pending in the Superior # 95-00048
Court for the County of Middlesex

Ordered, that the following entry be made in the docket:

Judgment affirmed.

By the Court,

_____, Asst, Clerk.

Date February 28, 1997

Signed by:

Lena M. Wong
Assistant Clerk, Appeals Court
Commonwealth of Massachusetts

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

96-P-364

FRANK J. CAMOSCIO

vs.

ROBERT A. MULLIGAN[1] and another.[2]

MEMORANDUM AND ORDER

PURSUANT TO RULE 1:28

The judgment is affirmed for substantially the reasons set forth by the motion judge.

Judgment affirmed.

By the Court (Perretta, Dreben & Jacobs, JJ),

Assistant Clerk

Entered: February 28, 1997.

[1] Chief Justice of the Superior Court.

[2] Daniel F. Pokaski, Clerk-Magistrate of the Superior Court.